

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No.420 of 1986

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For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 : NO

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BALDEVBHAI J PATEL

Versus

DR SINGH

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Appearance:

MR SH SANJANWALA for Petitioner  
None present for the respondents.

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/11/98

ORAL JUDGEMENT :

This Revision Application is directed by the defendant / petitioner against the order of the learned City Civil Court, Ahmedabad dated 13.3.1986 below exh.32 in Summary Suit No.4209 of 1985 in which he has been granted conditional leave to defend the summary suit filed by the plaintiff/ respondent. The condition was

that he should deposit Rs.25,000/- in the Court on or before 19.6.1986. The claim of the plaintiff/ respondent in the suit is for an amount of Rs.72,750/-. As against the claim of the plaintiff/ respondent, it not in dispute that the petitioner/ defendant no.1 has already deposited Rs.55,000/-. Despite this fact that the learned Judge in the case has granted leave to defend on deposit of Rs.25000/-. Nobody is present for the respondent to controvert this fact. Absence of the plaintiff/ respondent or his advocate or any other person on his behalf suggest that he is not interested to oppose this CRA. These facts are taken to be correct and appears to be correct also. The impugned order reads as under:

"Heard. Conditional leave to defend to defendant no.1 on the defendant no.1 depositing a sum of Rs.25000/- (Rs.twenty five thousand only) in cash or by demand draft on or before 19.6.1986 leave to defend. On the deposit being made as above suit to be transferred to the list of long causes, and written statement within two weeks thereafter.

NOTE : This order is independent of the order requiring the defendant to deposit Rs.50,000/under exh.38 and this order is summons for judgment will not prejudice either side as far as Rs.50,000/- are deposited."

2. As per the Note of the court to this order it is clearly borne out that the defendant/ petitioner has deposited Rs.50,000/- in the court. So even if it is taken to be Rs.50,000/- the further condition of deposit of Rs.25,000/- as a condition to grant leave to defend is certainly arbitrary which cannot be allowed to stand. This case clearly falls under clause (c) of subsec.1 of sec.115 of the Code of Civil Procedure. Further in case the order of the learned trial court is allowed to stand certainly it will occasion a failure of justice and cause injury to the defendant/ petitioner. In the result this Civil Revision Application is allowed and the order of the City Civil Court, Ahmedabad, below exh.32 dated 13.3.1986 in Summary Suit No.4209 of 1985 is quashed and set aside. Rule is made absolute accordingly. No order as to costs.

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